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ECKERT SEAMANS CHERIN & MELLOTT, LLC U.S. STEEL TOWER 600 GRANT STREET PITTSBURGH, PA 15219-2788			DUNHAM, JASON B	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID M. OLIVER, WILLIAM P. DENSMORE, JR., and
MICHAEL J. CALLAHAN

Appeal 2009-005524
Application 09/036,236
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

The Appellants seek our review under 37 U.S.C. § 41.52 and request that we reconsider the Decision of Aug. 13, 2010 wherein we affirmed the rejection of claims 1-88.

THE INVENTION

The Appellants' claimed invention is directed to a system for managing client accounts and controlling access to resources over data networks and for sharing client information and charges among a plurality of service providers (Spec. 4:11-13).

ANALYSIS

Issue 1

The Appellants argue first, with regard to claim 1, that the Decision failed to apply 35 § U.S.C. 112, sixth paragraph, since means-plus-function language was used in the claim and it is asserted that such language was not given its broadest reasonable interpretation in light of the Specification (Request 2-3). Specifically, the Appellants argue that claim elements (c), (d), and (f) recite mean-plus-function language and that proper claim construction was not given for these terms but provides no arguments beyond this to show how the prior art was improperly applied to the claim (Request 2-3).

We have reviewed the rejection of claim 1 and determined that the recitations for means-plus-function language in claim elements (c), (d), and (f) of claim 1 were properly given the broadest reasonable interpretation in

light of the Specification and under 35 § U.S.C. 112, sixth paragraph (see Decision 9-10) and that the cited prior art was properly applied against the claim and the Request is denied in this regard. We note that the Appellants have presented the same arguments in the Request for claim element (e) of claim 1 but this argument was not raised in the Brief and cannot be raised now (see 37 C.F.R. § 41.52(a)(1)).

Issue 2

Claims 9 and 26

The Appellants argue that with respect to claims 9 and 26 that the Decision overlooked arguments presented to the Board that were beyond merely citing what each claim recites (Request 5-7). The Appellants draw attention to arguments presented regarding Exhibit O, Exhibit L, and the Third Declaration of William P. Densmore, Jr. made in regard to claims 9 and 26 and state that these arguments challenge the existence of the *prima facie* case of the rejection (Request 5-6).

We have considered these arguments made by the Appellants in the Request but do not find them to be persuasive. Note that the Decision of record did address these cited arguments regarding the above cited Exhibits and Declaration but noted that they only provided the same arguments addressed earlier in the Decision (see Decision 12:21-13:6 which references an earlier section of that same Decision). The Decision also provided additional reasons why arguments presented with regard to Exhibit L were insufficient (see Decision 13:1-6). For these reasons the Request for Reconsideration is not granted with regard to claims 9 and 26.

Claims 35-62

The Appellants begin by stating that arguments were presented for claims 35-62 in the Brief at pages 36-42 (Request 7). The Appellants Brief at pages 36-42 presented only general arguments which were addressed in the Decision previously (Decision 7-11). Note also that the Appellants formal arguments for claims 35-62 were presented at pages 54-56 and 67-76 of the Brief and addressed in the Decision at pages 13-15.

The Appellants have also argued that with respect to claims 35-62 that the “Board has not yet decided the issue of whether the Declarations were of record” and that the case should be remanded for consideration of the cited Declarations. Our Decision stated that we have determined, and it has been decided, that the referenced Declaration of David M. Oliver, William P. Densmore, Jr. and Michael J. Callahan was not officially deemed to have been entered (Decision 14). In contrast, the Third Declaration of William P. Densmore, Jr. was entered by the Examiner and arguments in regard to that Declaration were considered in the Decision (see Decision 15). As our finding in the record that the referenced Declaration of David M. Oliver, William P. Densmore, Jr. and Michael J. Callahan was not part of the entered record, the arguments made with regard to that Declaration were not considered. We decline to remand the issue to the Examiner as the Appellants did not raise this issue with the Examiner in a timely manner, and we see no record of Appellants addressing this particular Declaration whatsoever in the subsequent responses of Oct. 6, 2005 or Nov. 23, 2006 to the Examiner. Regardless, we have reviewed of the Declaration of David M. Oliver, William P. Densmore, Jr. and Michael J. Callahan and the cited Declaration fails to show that the Appellants possessed the claimed elements

for generating a challenge message at the SP (service provider) site in the claimed protocol for which the Examiner has cited the Teper reference (see Ans. 13). For these reasons the Request for Reconsideration of claims 35-62 is denied.

Issue 3

The Appellants argue that the Decision failed to determine why the Declarations submitted failed to antedate the Teper reference (Request 8). A review of the Decision shows that all the arguments presented in Appeal Brief in relation to the Declarations were considered and addressed (Decision 11-16). As mentioned in the section above, the Declaration of David M. Oliver, William P. Densmore Jr. and Michael J. Callahan has been determined to not have been officially entered into the record and arguments in this regard were therefore not considered. Regardless, a review of the Declaration of David M. Oliver, William P. Densmore, Jr. and Michael J. Callahan has been found it to be insufficient to antedate the Teper reference for the reasons given in the section above. For these reasons, the Request for Reconsideration with regard to the claims 35-62 and 65 in this regard is denied.

Issue 4

The Appellants have argued that a non-patent reference is not to be presumed to be enabling and provides arguments for this in the Request at pages 9-11.

We have considered the arguments presented by the Appellants and our Decision acknowledged that there does not seem to be a case particularly

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addressing this situation. However, our Decision provided a detailed rationale of why the cited case law points to the rationale used (Decision 5-9) and we decline to grant the request in this regard despite the Appellants' arguments. The Appellants again argue that the Declarations cited have not been considered but as we have previously explained in the Decision, as well as above, all the Declarations officially entered into the file have been fully considered. The Declaration of David M. Oliver, William P. Densmore, Jr. and Michael J. Callahan has been found to not have been of record in the file and was therefore not considered in the Decision. Regardless, a review of that Declaration has found it to be insufficient to antedate the Teper reference for the reasons given in the section above. For these above reasons the Request for Reconsideration in this regard is also denied.

DECISION

Accordingly, the Appellants' Request for Rehearing is denied.

DENIED

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